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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/648,066      | 08/24/2003  | Dominick Damiano     | 88265-6975          | 2845             |

28765 7590 04/19/2004

WINSTON & STRAWN  
PATENT DEPARTMENT  
1400 L STREET, N.W.  
WASHINGTON, DC 20005-3502

EXAMINER

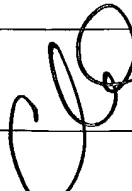
PELHAM, JOSEPH MOORE

ART UNIT PAPER NUMBER

3742

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/648,066 | <b>Applicant(s)</b><br>DAMIANO ET AL. |  |
|                              | <b>Examiner</b><br>Joseph M Pelham   | <b>Art Unit</b><br>3742               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-17 and 20-29 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/24/03</u> . | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

Claims 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At line 4, claim 26 recites "first and second surfaces," which lacks adequate antecedent basis.

***Claim Rejections - 35 USC § 102***

Claims 1-4, 14-17, 20-24, 26, 27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4102256 to John et al (US'256).

Referring to Figs. 7-16, col. 4, lines 1-33, and col. 6, line 1, through col. 7, line 22, US'256 discloses the invention substantially as claimed, including a housing (206, inter alia), with internal resistive heating surfaces (198, 200) comprising "shaped" solid mica "mats" (sheets in US'256), with thermally and electrically insulating jacket (158), a concave heated surface (154), and stainless steel support (106) for the heater assembly (e.g. 200-206), which evidently may be replaced with alternative arrangements for other container shapes (see Fig. 16 and col. 7, lines 4-22), and which establishes contact with "substantially" all food container surfaces. The examiner notes that US'256 discloses sensor-based temperature control (col. 8 lines 12-36).

***Claim Rejections - 35 USC § 103***

Claims 5, 8-13, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'256 in view of US Pat. 3974358 to Goltsos (US'358).

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The claims differ from US'256 only in calling for individually controlled heating zones, a power density of 0.45 to 1.2 Watts/sq. cm., memory based timed sampling control means for maintaining a temperature set point, high power density warm-up (0.40 – 0.80 W/sq. cm.) and low power density maintenance (less than 0.18 W/sq. cm.) heating control regimes.

US'358 discloses, at col. 5, lines 3-33, especially, individually controlled heating zones for a food container heating device, and high power warm-up and low power maintenance heating control regimes. It would have been obvious to adapt the zone heating means and heating regimes of US'358 to the device of US'256, to enhance the control and therefore versatility of the device. While US'358 does not explicitly disclose specific power density values, such cannot be regarded to patentably distinguish the claimed invention from the prior art of record, since the specific power requirements would be determined strictly by the particular food item treated, and whether it was frozen or not, all of which cases are treated in the prior art.

**Note:** Applicant is urged to review the prior art cited but not applied when replying to this Office action.

#### ***Allowable Subject Matter***

Claims 6, 7, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 703-308-1709. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



4/15/2004

JOSEPH PELHAM  
PRIMARY EXAMINER